

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

ZIMMER M/L TAPER HIP PROSTHESIS OR M/L TAPER
HIP PROSTHESIS WITH KINECTIV TECHNOLOGY AND
VERSYS FEMORAL HEAD PRODUCTS LIABILITY
LITIGATION

MDL No. 2859

18-MD-2859 (PAC)
18-MC-2859 (PAC)

This Document Relates to All Actions

ORDER NO. 33
MEMORIALIZING
DECEMBER 12,
2019 STATUS
CONFERENCE

PAUL A. CROTTY, United States District Judge:

On December 12, 2019, the Court held a Status Conference to receive an update on the Parties' progress in MDL No. 2859.

I. STATUS OF CURRENT FEDERAL AND STATE COURT ACTIONS

To date, there are one-hundred sixty-eight (168) filed cases in this multidistrict litigation ("MDL"). There are thirteen (13) active cases pending in various state courts.

II. ZIMMER'S MOTION REGARDING *EX PARTE* COMMUNICATIONS

The Parties submitted briefs regarding their respective positions on *ex parte* communications with treating physicians and experts. The Court also heard oral argument from each party. The Court will issue its ruling by separate order.

III. BRIEFING ON PRODUCTION OF ADVERSE EVENTS

The Parties highlighted for the Court a disagreement over production of adverse event reports. The Parties are to advise the Court if the Parties are not able to resolve this discovery dispute. In the event briefing on this issue is required, the Plaintiffs will file a

15-page, double-spaced motion. Zimmer will respond within 14 days with a 15-page, double-spaced brief. Plaintiffs will file a 10-page, double-spaced reply 7 days thereafter.

IV. BELLWETHER SELECTION

The Parties submitted briefs detailing their respective positions on the four cases that the Court should select for bellwether trial workup in Category One (Kinectiv) and Category Two (M/L Taper). The Court ruled *Little, Joseph et al. v Zimmer et al.* (18-cv-10393) and *Nutting, Tamma v. Zimmer et al.* (19-cv-00699) will be tried in Category One. The Court heard oral argument from the Parties with regard to the remaining cases in Category Two and will issue its decision by separate order.

V. PATHOLOGY

Plaintiffs brought an issue to the Court's attention regarding pathology tissue. The Judge requested that the Parties submit letters to the Court for consideration, if needed.

VI. NEXT STATUS CONFERENCE

The Court has set a control date of February 19, 2020 at 4:30 o'clock PM for the next status conference. The conference will occur in **Courtroom 14-C** of the Daniel Patrick Moynihan United State Courthouse, 500 Pearl Street, New York, New York 10007. Counsel should check in with the Courtroom Deputy at least fifteen minutes in advance. Counsel should arrive at the Courthouse with sufficient time to go through security. Seats in the Courtroom may not be reserved. No later than five (5) days prior to the Status Conference, counsel shall file a joint letter, not to exceed five (5) single-spaced pages and to be filed in **both 18-MD-2859 and 18-MC-2859**, setting forth the parties' tentative agenda.

SO ORDERED.

December 19, 2019
New York, NY

Paul McCrory
JS/DT